

63H-2-101. Title.

This chapter is known as the "Utah Energy Infrastructure Authority Act."

Amended by Chapter 37, 2012 General Session

63H-2-102. Definitions.

As used in this chapter:

- (1) "Agency" is as defined in Section 17C-1-102.
- (2) "Assessment area" is as defined in Section 11-42-102.
- (3) "Assessment bonds" is as defined in Section 11-42-102.
- (4) "Authority" means the Utah Energy Infrastructure Authority created in Section 63H-2-201.
- (5) "Authority bond" means a bond issued by the authority in accordance with Part 4, Bonding.
- (6) "Board" means the board created under Section 63H-2-202.
- (7) "Community" means the county, city, or town in which is located a qualifying energy delivery project financed by an authority bond.
- (8) "Electric interlocal entity" has the same meaning as defined in Section 11-13-103.
- (9) "Energy advisor" means the governor's energy advisor appointed under Section 63M-4-201.
- (10) "Energy delivery project" means a project that is designed to:
 - (a) increase the capacity for the delivery of energy to a user of energy inside or outside the state; or
 - (b) increase the capability of an existing energy delivery system or related facility to deliver energy to a user of energy inside or outside the state.
- (11) "Independent state agency" is as defined in Section 63E-1-102.
- (12) "Project area" is as defined in Section 17C-1-102.
- (13) "Public entity" means:
 - (a) the United States or an agency of the United States;
 - (b) the state or an agency of the state;
 - (c) a political subdivision of the state or an agency of a political subdivision of the state;
 - (d) another state or an agency of that state; or
 - (e) a political subdivision of another state or an agency of that political subdivision.
- (14) "Qualifying energy delivery project" means a project approved by the board in accordance with Part 3, Qualifying Energy Delivery Projects.
- (15) "Record" means information that is:
 - (a) inscribed on a tangible medium; or
 - (b) (i) stored in an electronic or other medium; and
 - (ii) retrievable in perceivable form.
- (16) "Tax increment bond" is as defined in Section 11-27-2.

Amended by Chapter 301, 2014 General Session

63H-2-201. Creation of Utah Energy Infrastructure Authority.

- (1) There is created an independent state agency known as the "Utah Energy Infrastructure Authority."
- (2) Subject to Section 63H-2-203, the authority may:
- (a) sue and be sued;
 - (b) enter into contracts generally;
 - (c) (i) accept financial or other assistance from a public or private source for the authority's activities, powers, and duties; and
 - (ii) expend money received under Subsection (2)(c)(i) for the purpose of building or enhancing the state's energy delivery infrastructure;
 - (d) (i) for the purpose of studying a qualifying transmission project, borrow money or accept financial or other assistance from:
 - (A) a public entity; or
 - (B) any other source; and
 - (ii) comply with a condition of a loan or assistance described in Subsection (2)(d)(i);
 - (e) in accordance with Part 4, Bonding, issue one or more bonds to finance a qualifying energy delivery project;
 - (f) hire one or more employees, including:
 - (i) a contract employee; and
 - (ii) legal counsel;
 - (g) enter into a partnership agreement with a business entity related to a qualifying energy delivery project;
 - (h) enter into an agreement with a public entity related to a qualifying energy delivery project;
 - (i) if none of the authority's net earnings inure to the benefit of a private entity, use money available to the authority:
 - (i) for administrative, overhead, legal, or other operating expenses of the authority; and
 - (ii) to pay the principal and interest on an authority bond;
 - (j) create one or more subsidiaries to engage in an activity that the authority may engage in under this chapter;
 - (k) transact other business related to a qualifying energy delivery project;
 - (l) acquire, own, lease, or sell real property or personal property related to a qualifying energy delivery project; or
 - (m) exercise a power provided for in this chapter.
- (3) Unless expressly provided in this chapter, the state is not liable for an obligation, expense, debt, or liability of the authority.

Amended by Chapter 37, 2012 General Session

63H-2-202. Authority board.

- (1) There is created the Utah Energy Infrastructure Authority Board that consists of nine members, appointed by the governor as follows:
- (a) the energy advisor, who shall serve as chair of the board;

- (b) one member from the Governor's Office of Economic Development;
 - (c) three members from a public utility or electric interlocal entity that operates electric transmission facilities within the state as follows:
 - (i) one member selected by the governor from recommendations from an investor-owned electric corporation that operates in this state;
 - (ii) one member selected by the governor from recommendations from a wholesale electrical cooperative, as defined in Section 54-2-1, in the state; and
 - (iii) one member selected by the governor from recommendations from an electric interlocal entity;
 - (d) the director of the School and Institutional Trust Lands Administration created in Section 53C-1-201;
 - (e) two representatives of business entities that produce energy; and
 - (f) one member of the general public who has experience with public finance and bonding.
- (2) (a) The term of a board member is four years.
- (b) Notwithstanding Subsection (2)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.
- (c) The governor may remove a member of the board for cause.
- (d) The governor shall fill a vacancy in the board in the same manner under this section as the appointment of the member whose vacancy is being filled.
- (e) An individual appointed to fill a vacancy shall serve the remaining unexpired term of the member whose vacancy the individual is filling.
- (f) A board member shall serve until a successor is appointed and qualified.
- (3) (a) Five members of the board constitute a quorum for conducting board business.
- (b) A majority vote of the quorum present is required for an action to be taken by the board.
- (4) (a) The board shall meet at least quarterly on a date the board sets.
- (b) The chair of the board or any two members of the board may call additional meetings.
- (5) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
- (a) Section 63A-3-106;
 - (b) Section 63A-3-107; and
 - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 37, 2012 General Session

63H-2-203. Powers of the board and authority -- Officers.

- (1) (a) The authority is governed by the board.
- (b) Only the board may exercise a power of the authority.
- (2) Subject to the other provisions of this chapter, the board shall:

- (a) manage and conduct the activities of the authority; and
- (b) determine the policies of the authority.
- (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board may make rules necessary to implement this chapter.
- (4) The board may:
 - (a) appoint one or more officers and employees required for the performance of the board's duties under this chapter; and
 - (b) fix and determine the qualifications and duties of an officer or employee described in Subsection (4)(a).

Enacted by Chapter 378, 2009 General Session

63H-2-204. Dissolution of authority.

- (1) Subject to the other provisions of this section, the board may dissolve the authority:
 - (a) if the board determines that the authority can no longer comply with the requirements of this chapter; and
 - (b) by a vote of at least five members of the board.
- (2) The authority may not be dissolved if the authority has any of the following:
 - (a) an outstanding bonded indebtedness;
 - (b) an unpaid loan, indebtedness, or advance; or
 - (c) a legally binding contractual obligation with a person other than the state.
- (3) Upon the dissolution of the authority:
 - (a) the Governor's Office of Economic Development shall publish a notice of dissolution:
 - (i) in a newspaper of general circulation in each county in which a qualifying energy delivery project is located; and
 - (ii) electronically, in accordance with Section 45-1-101;
 - (b) the authority shall deposit its records with the state auditor, to be retained for the time period determined by the state auditor; and
 - (c) the assets of the authority shall revert to the state.
- (4) The authority shall pay the expenses of dissolution and winding up the affairs of the authority.
- (5) If a dissolution under this section is part of a privatization of the authority, the dissolution is subject to Title 63E, Chapter 1, Part 4, Privatization of Independent Entities.

Amended by Chapter 37, 2012 General Session

63H-2-301. Prioritization of energy delivery projects.

- (1) The board shall review the location and availability of energy sources in the state.
- (2) The board shall:
 - (a) determine if there is adequate infrastructure and capacity to bring energy sources to market;

- (b) prioritize projects on the basis of:
 - (i) location;
 - (ii) supporting responsible energy development;
 - (iii) feasibility of development; and
 - (iv) economic development factors; and
- (c) provide available funding to develop energy resource plans to provide for energy infrastructure development, including development of an integrated resource plan.

Amended by Chapter 37, 2012 General Session

63H-2-302. Approval of qualifying energy delivery project.

(1) To approve a qualifying energy delivery project, the board shall determine that the project:

(a) contributes to the economy of the state and the one or more communities where the project is located;

(b) is strategically situated to maximize connections to an energy source project located in the state that is:

(i) existing;

(ii) under construction;

(iii) planned; or

(iv) foreseeable;

(c) is supported by a business case for providing the revenue necessary to:

(i) service an authority bond issued to finance the project; and

(ii) finance the construction and operation of a project;

(d) is supported by a project plan related to:

(i) engineering;

(ii) environmental issues;

(iii) energy production;

(iv) load or other capacity; and

(v) any other issue related to the building and operation of energy delivery infrastructure;

(e) complies with the regulations of the following regarding the building of energy delivery infrastructure:

(i) the Federal Energy Regulatory Commission;

(ii) the North American Electric Reliability Council; and

(iii) the Public Service Commission of Utah; and

(f) promotes responsible energy development.

(2) This chapter may not be used to compel interconnection to or use of a transmission or interconnection line or facility that belongs to another person.

Amended by Chapter 37, 2012 General Session

63H-2-401. Resolution authorizing issuance of authority bond -- Characteristics of bond.

(1) (a) Subject to the other requirements of this part, the authority may issue a bond:

(i) if the authority obtains the consent of the agency or municipality in which the assessment area or project area is located, to finance, in whole or in part, a qualifying energy delivery project; or

(ii) to:

(A) finance the purchase of one or more assessment bonds or tax increment bonds issued by a municipality or agency to facilitate an energy delivery project in a specific assessment area or project area; and

(B) administer an assessment area or project area that generates revenue to pay the debt service on an assessment bond or a tax increment bond described in Subsection (1)(a)(ii)(A).

(b) The authority may not issue a bond under this part unless before the issuance of the bond, the board adopts a resolution authorizing the issuance of the bond.

(2) (a) If provided in a resolution authorizing the issuance of an authority bond or in the trust indenture under which the authority bond is issued, an authority bond may be:

(i) issued in one or more series; and

(ii) sold:

(A) at a public or private sale; and

(B) in the manner provided in the resolution or indenture.

(b) An authority bond shall:

(i) bear the date provided in the resolution authorizing the issuance of the authority bond or the trust indenture under which the authority bond is issued;

(ii) be payable at the time provided in the resolution authorizing the issuance of the authority bond or the trust indenture under which the authority bond is issued;

(iii) bear interest at the rate provided in the resolution authorizing the issuance of the authority bond or the trust indenture under which the authority bond is issued;

(iv) be in the denomination and in the form provided in the resolution authorizing the issuance of the authority bond or the trust indenture under which the authority bond is issued;

(v) carry the conversion or registration privileges provided in the resolution authorizing the issuance of the authority bond or the trust indenture under which the authority bond is issued;

(vi) have the rank or priority as provided in the resolution authorizing the issuance of the authority bond or the trust indenture under which the authority bond is issued;

(vii) be executed in the manner as provided in the resolution authorizing the issuance of the authority bond or the trust indenture under which the authority bond is issued;

(viii) be subject to the terms of redemption or tender, with or without premium, as provided in the resolution authorizing the issuance of the authority bond or the trust indenture under which the authority bond is issued;

(ix) be payable in the medium of payment and at the place as provided in the

resolution authorizing the issuance of the authority bond or the trust indenture under which the authority bond is issued; and

(x) have other characteristics as provided in the resolution authorizing the issuance of the authority bond or the trust indenture under which the authority bond is issued.

Amended by Chapter 301, 2014 General Session

63H-2-402. Sources from which an authority bond may be made payable -- Authority powers regarding authority bond.

(1) The principal and interest on an authority bond may be made payable from:

(a) the income and revenues related to a qualifying energy delivery project financed with the proceeds of the authority bond;

(b) the income and revenues from a public or private source under Subsection 63H-2-201(2)(c);

(c) a contribution, loan, grant, or other financial assistance from a public entity or other source under Subsection 63H-2-201(2)(d);

(d) authority revenues generally; or

(e) money derived from a combination of the methods listed in Subsections (1)(a) through (d).

(2) In connection with the issuance of an authority bond, the authority may:

(a) pledge all or any part of the authority's gross or net revenues to which the authority:

(i) has a right that exists at issuance of the authority bond; or

(ii) may have a right that comes into existence after issuance of the authority bond; and

(b) even if a covenant or action is not specifically enumerated in this chapter, make a covenant or take an action that:

(i) may be necessary, convenient, or desirable to secure the authority bond; or

(ii) except as otherwise provided in this chapter, will tend to make the authority bond more marketable.

(3) A member of the board or other person executing an authority bond is not liable personally on the authority bond.

(4) (a) An authority bond:

(i) is not a general obligation or liability of the state or any of the state's political subdivisions; and

(ii) does not constitute a charge against the general credit or taxing powers of the state or any of the state's political subdivisions.

(b) An authority bond is not payable out of money or properties other than those of the authority pledged for the payment of the bond.

(c) A community, the state, or a political subdivision of the state may not be liable on an authority bond.

(d) An authority bond does not constitute indebtedness within the meaning of a constitutional or statutory debt limitation.

(5) An authority bond is fully negotiable.

(6) An authority bond is:
(a) issued for an essential public and governmental purpose; and
(b) together with interest on the authority bond and income from the authority bond, exempt from state taxes except the corporate franchise tax.

(7) Nothing in this section may be construed to limit the right of an obligee to pursue a remedy for the enforcement of a pledge or lien given under this part by the authority on the authority's rents, fees, grants, properties, or revenues.

Amended by Chapter 37, 2012 General Session

63H-2-403. Purchaser of an authority bond.

(1) The following may purchase an authority bond with funds owned or controlled by the purchaser:

- (a) a person;
- (b) a political subdivision of the state;
- (c) another entity; or
- (d) a public or private officer.

(2) Nothing in this section or Section 63H-2-402 may be construed to relieve a purchaser of an authority bond of a duty to exercise reasonable care in selecting securities.

(3) The authority may purchase its own authority bond at a price that the board determines.

Enacted by Chapter 378, 2009 General Session

63H-2-404. Obligee rights -- Board may confer other rights.

(1) In addition to a right that is conferred on an obligee of an authority bond under this chapter and subject to contractual restrictions binding on the obligee, an obligee may:

- (a) by mandamus, suit, action, or other proceeding:
 - (i) compel the authority and its board, officers, agents, or employees to perform every term, provision, and covenant contained in a contract of the authority with or for the benefit of the obligee; and
 - (ii) require the authority to carry out the covenants and agreements of the authority and to fulfill the duties imposed on the authority by this part; and
- (b) by suit, action, or proceeding in equity, enjoin an act or things that may be unlawful or violate the rights of the obligee.

(2) (a) In a resolution authorizing the issuance of an authority bond or in a trust indenture, mortgage, lease, or other contract, the board may confer upon an obligee holding or representing a specified amount in an authority bond, a right described in Subsection (2)(b):

- (i) to accrue upon the happening of an event or default prescribed in the resolution, indenture, mortgage, lease, or other contract; and
- (ii) to be exercised by suit, action, or proceeding in a court of competent jurisdiction.

(b) (i) A right that the board may confer under Subsection (2)(a) is a right to:

- (A) cause possession of all or part of a qualifying energy delivery project to be surrendered to an obligee;
- (B) obtain the appointment of a receiver of all or part of:
 - (I) a qualifying energy delivery project; and
 - (II) the rents and profits from a qualifying energy delivery project; and
- (C) require the authority, its board, and its employees to account as if the authority, board, and employees were the trustees of an express trust.

(ii) If a receiver is appointed through the exercise of a right granted under Subsection (2)(b)(i)(B), the receiver:

- (A) may:
 - (I) enter and take possession of a qualifying energy delivery project or any part of the qualifying energy delivery project;
 - (II) operate and maintain the qualifying energy delivery project; and
 - (III) collect and receive the fees, rents, revenues, or other charges arising from the qualifying energy delivery project after the receiver's appointment; and
- (B) shall:
 - (I) keep money collected as receiver for the authority in one or more separate accounts; and
 - (II) apply the money collected as receiver pursuant to the authority obligations as the court directs.

Amended by Chapter 37, 2012 General Session

63H-2-501. Fiscal year.

The authority's fiscal year is the period:

- (1) beginning on July 1; and
- (2) ending on June 30 of the following calendar year.

Enacted by Chapter 378, 2009 General Session

63H-2-502. Annual authority budget -- Auditor forms -- Requirement to file form.

(1) (a) The authority shall prepare an annual budget of revenues and expenditures for the authority for each fiscal year.

(b) Before June 22 of each year and subject to the other provisions of this section, the board shall adopt an annual budget of revenues and expenditures of the authority for the immediately following fiscal year.

(2) (a) Before adopting an annual budget, the board shall hold a public hearing on the annual budget.

(b) Before holding the public hearing required by this Subsection (2), the board shall post notice of the public hearing on the Utah Public Notice Website created under Section 63F-1-701 no less than 14 days before the day on which the public hearing is to be held.

(3) The state auditor shall prescribe the budget forms and the categories to be

contained in each annual budget of the authority, including:

- (a) revenues and expenditures for the budget year;
- (b) the outstanding bonds and related expenses;
- (c) legal fees; and
- (d) administrative costs, including:
 - (i) rent;
 - (ii) supplies;
 - (iii) other materials; and
 - (iv) salaries of authority personnel.

(4) Within 30 days after adopting an annual budget, the board shall file a copy of the annual budget with:

- (a) the State Tax Commission; and
- (b) the state auditor.

(5) (a) Subject to Subsection (5)(b), the board may by resolution amend an annual budget of the authority.

(b) The board may make an amendment of an annual budget that would increase total expenditures of the authority only after:

- (i) holding a public hearing; and
- (ii) before holding the public hearing required by this Subsection (5)(b), posting notice of the public hearing on the Utah Public Notice Website created under Section 63F-1-701 no less than 14 days before the day on which the public hearing is to be held.

(6) The authority may not make expenditures in excess of the total expenditures established in the annual budget as it is adopted or amended.

Enacted by Chapter 378, 2009 General Session

63H-2-503. Audits.

(1) The state auditor may audit or contract with an independent certified public accountant to audit the books and accounts of the authority, including compliance with this chapter.

(2) The authority shall reimburse the state auditor from the authority's available money for the actual and necessary costs of an audit conducted under Subsection (1).

Enacted by Chapter 378, 2009 General Session

63H-2-504. Relation to other state statutes.

(1) The authority is subject to review by the Retirement and Independent Entities Committee in accordance with Title 63E, Chapter 1, Independent Entities Act.

(2) The authority is subject to:

- (a) Title 51, Chapter 5, Funds Consolidation Act;
- (b) Title 51, Chapter 7, State Money Management Act;
- (c) Title 52, Chapter 4, Open and Public Meetings Act;
- (d) Title 63A, Utah Administrative Services Code;
- (e) Title 63G, Chapter 2, Government Records Access and Management Act;

- (f) Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
- (g) Title 63G, Chapter 4, Administrative Procedures Act;
- (h) Title 63G, Chapter 6a, Utah Procurement Code;
- (i) Title 63J, Chapter 1, Budgetary Procedures Act;
- (j) Title 63J, Chapter 2, Revenue Procedures and Control Act; and
- (k) Title 67, Chapter 19, Utah State Personnel Management Act.

Amended by Chapter 347, 2012 General Session